UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/AC.26/2000/10
15 March 2000

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION

NINTH REPORT OF THE EXECUTIVE SECRETARY PURSUANT TO ARTICLE 41 OF THE PROVISIONAL RULES FOR CLAIMS PROCEDURE

GE.00-60795

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), corrections to approved claim awards in categories "A" and "C".

I. CORRECTIONS TO CATEGORY "A" CLAIM AWARDS

2. Recommendations for corrections to category "A" claims include duplicate claims found as a result of applying the intra-category "A" matching programme to the sixth instalment of category "A" claims, duplicate and other miscellaneous corrections reported by Governments and changes in submitting entities requested by Governments and international organizations.

A. Category "A" duplicate claims

3. Since the last article 41 report, a total of 1,046 claims have been found to be duplicates of other claims also awarded compensation in category "A". Of this total 220 claims from eleven Governments were detected by the intra-category matching programme, a programme that allows the Commission to locate duplicate claims within category "A". This programme was previously applied to the first five instalments of category "A" claims, the results of which were reported to the Governing Council in the sixth article 41 report (S/AC.26/1999/12). For this ninth article 41 report the Commission has completed the final application of the matching programme for the sixth instalment of category "A" claims.

4. In addition to the claims detected by the intra-category "A" matching programme, six Governments have reported an additional 826 duplicate claims. The majority of these claims were located by the Governments of Bosnia and Herzegovina, India, the Philippines and Sri Lanka. No compensation should have been awarded for the duplicate claims and the total recommended awards should be revised accordingly. The following table identifies the Governments concerned, the instalments to be adjusted, the total number of claims to be corrected and the total amount by which the instalment will be reduced. 1/

Table 1. Category "A" duplicate claims included in the ninth article 41 report

Government or international organization	Instalment	Total number of duplicate claims	Amount of reduction (US$)
Bangladesh	Sixth	25	91,000.00
Bosnia and Herzegovina	Fifth	13	52,000.00
	Sixth	71	284,000.00

1/ The amount refunded and recovered with respect to the 1,046 claims is currently US$2,448,483.

Government or international organization	Instalment	Total number of duplicate claims	Amount of reduction (US$)
Egypt	Fourth	1	2,500.00
	Sixth	6	15,000.00
India	First	1	2,500.00
	Fourth	5	15,500.00
	Fifth	47	183,000.00
	Sixth	26	91,000.00
Iran	Sixth	13	82,500.00
Jordan	Sixth	1	5,000.00
Morocco	Sixth	2	7,500.00
Pakistan	Sixth	6	21,000.00
Philippines	Fourth	53	204,500.00
	Fifth	1	4,000.00
	Sixth	25	95,500.00
Sri Lanka	First	8	21,500.00
	Second	25	100,000.00
	Third	16	64,000.00
	Fourth	487	1,931,500.00
	Fifth	143	572,000.00
	Sixth	60	240,000.00
Thailand	Fifth	10	40,000.00
Turkey	Sixth	1	2,500.00
Total		1,046	4,128,000.00

5. The adjusted claim awards have been included in the corrected total recommended awards in annex I, infra.

B. Other category "A" corrections

1. Non-duplicate claims

6. In the sixth instalment report on category "A" claims (S/AC.26/1996/3), three claims submitted by the Governments of Sudan, Bosnia and Herzegovina and Viet Nam were identified as duplicates of other claims previously awarded compensation. Additional information submitted by the respective Governments and authorities has now shown that the claims were in fact submitted by different individuals and that no duplication

exists in these situations. The total recommended awards for Sudan, Bosnia and Herzegovina and Viet Nam in the sixth instalment should be revised accordingly.

2. Decision 21 corrections

7. Decision 21 (S/AC.26/Dec.21 (1994)) of the Governing Council states that "any claimant who has selected a higher amount under category 'A' (US$4,000 or US$8,000) and has also filed a category 'B', 'C' or 'D' claim will be deemed to have selected the corresponding lower amount under category 'A'". Six claimants who filed for higher amounts in category "A" have been found to have filed claims in other categories. In accordance with decision 21, one claim for India in the fourth instalment, two claims for India in the fifth instalment, one claim for France in the first instalment and two claims for France in the fourth instalment have had their claim amounts adjusted downward.

3. Change of submitting entity

8. At the request and with the agreement of the Governments and international organizations concerned, one claim submitted by UNRWA Gaza and approved in the fifth instalment has been transferred to the Government of Canada, one claim submitted by the Government of India and approved in the fourth instalment has been transferred to the Government of Australia, one claim submitted by the Government of India and approved in the fourth instalment has been transferred to UNRWA Gaza, and one claim submitted by the Government of Sudan and approved in the fourth instalment has been transferred to UNHCR Germany.

4. Corrections to individual and family member claims

9. Four claims originally filed as family claims have been found to be claims submitted by individuals. Accordingly, two claims submitted by Kuwait in the third instalment and one claim submitted by France in the sixth instalment have had their claim amounts reduced from US$5,000 to US$2,500. One claim submitted by France in the fourth instalment has also been reduced from US$8,000 to US$4,000.

10. Three claims originally identified as individual claims have been shown to have been filed on behalf of families. Accordingly, two claims filed by India in the fourth and fifth instalments have been increased from the individual amount of US$2,500 to the family amount of US$5,000. One claim filed by the Federal Republic of Yugoslavia in the fifth instalment has also been increased from the individual amount of US$4,000 to US$8,000.

11. The adjusted claim awards for the first to sixth instalments, and the total revised recommended awards for category "A" claims, are located in tables 1-7 of annex I.

II. CORRECTIONS TO CATEGORY "C" CLAIM AWARDS

12. Corrections to category "C" claim awards include corrections relating to the reallocation with respect to departure and relocation costs ("C1-Money" losses) and "C4" personal property losses ("C4-CPHO" losses), the transfer of compensable loss elements from duplicate claims to valid claims, the correction of technical defects in claims for "C6" salary losses and other miscellaneous corrections.

13. Corrections to category "C" claim awards that are included in this report comprise those that were recommended following electronic and manual reviews of claims in order to verify that claims were processed in accordance with the Panel's directives, as stated in the seventh instalment report (S/AC.26/1999/11). The post-processing reviews concentrated principally on claims that contained (a) technical defects, (b) complex problematic issues related to non-fast-track losses, or (c) both. Thus, these reviews for the most part included claims reported in the sixth and seventh instalments. Where claims met the criteria for correction pursuant to article 41, corrections were recommended accordingly.

14. To a lesser extent, these corrections also resulted from manual reviews of claims following requests for review that were received from submitting entities on behalf of either individual claimants or groups of individual claimants. Finally, this report includes modifications to submitting entities for three claims, as requested and authorized by the parties involved, in order to facilitate payment to claimants who were awarded compensation.

1. Miscellaneous corrections to category "C" claim awards

15. For this report, more than 4,000 category "C" claims presenting specific problematic outcome profiles were reviewed in accordance with the Panel's decisions and recommendations in paragraphs 54-59, 160-166, 209, 213-214, 217-218, 276-279, and 347-350 of the seventh instalment report, approved by the Governing Council in decision 70 (S/AC.26/Dec.70 (1999)). Corrections were recommended for 1,727 claims, resulting in a net increase of US$5,278,142.15 to awards for claims submitted by individuals.

16. The most problematic outcomes in the claims reviewed resulted from the inadvertent overwriting of certain electronic files during the electronic processing cycle for the seventh instalment. In such cases, the corrections have reinstated the original electronic file results.

17. Other corrections resulted after electronic or manual reviews of the following groups of claims: (a) claims for which recategorization of loss elements was indicated; (b) claims for which duplicate recovery for the same losses had resulted; or (c) claims containing loss elements that required special scrutiny, such as claims submitted for repairs to boats.

18. Losses for repairs to boats were not considered as separate loss elements by the Panel in the seventh instalment because no reviews of sample claims had included such losses. As a result, claims containing losses for repairs to motorboats were compensated during the electronic processing cycle for the seventh instalment in accordance with the methodology for repairs to automobiles ("C4-MV-Repairs") without having first been reviewed as separate losses. Because the methodology for C4-MV-Repairs had not been developed specifically for application to boat repair losses, award amounts for those losses were generally reduced in a disproportionate manner.

19. This situation required manual review of approximately 75 claim files. The recommended outcomes were thereafter manually determined in accordance with the Panel's methodology for repairs to motor vehicles as described on pages 157-158 of the first instalment report (S/AC.26/1994/3), as approved in Governing Council decision 25 (S/AC.26/Dec.25 (1994)), and summarized in paragraph 209 of the seventh instalment report. Where appropriate, corrections were recommended.

Table 2. Miscellaneous article 41 corrections to category "C" claims

Country or international organization	Instalment	Total number of claims affected	Amount of net effect (US$)
Australia	Seventh	1	7,474.05
Bangladesh	Second	2	6,767.40
	Sixth	2	5,743.95
	Seventh	10	39,635.84
Belgium	Seventh	1	14,016.51
Canada	Sixth	1	10,389.61
China	Seventh	1	-
Egypt	Seventh	6	(4,373.67)
Finland	Seventh	1	34,419.15
India	Second	4	24,399.65
	Fourth	12	66,767.99
	Fifth	4	16,782.01
	Sixth	9	35,295.62
	Seventh	40	131,306.55

Country or international organization	Instalment	Total number of claims affected	Amount of net effect (US$)
Iran	Sixth	3	6,928.00
	Seventh	1	10,380.63
Italy	Fourth	1	4,032.00
	Sixth	1	22,422.15
Jordan	Second	29	235,505.21
	Fourth	11	100,029.04
	Fifth	38	292,065.86
	Sixth	55	473,343.13
	Seventh	78	422,332.53
Kuwait	Seventh	60	727,163.45
Lebanon	Second	2	16,089.96
	Fifth	1	41,522.49
	Sixth	2	45,944.49
Pakistan	Fourth	2	12,352.94
	Fifth	1	4,567.47
	Sixth	10	66,906.09
	Seventh	1,263	2,001,013.56
Philippines	Fifth	3	18,373.71
	Sixth	2	6,920.41
	Seventh	6	6,051.50
Poland	Sixth	1	25,266.44
	Seventh	1	15,332.18
Sri Lanka	Seventh	1	(3,633.22)
Sudan	Second	1	4,987.70
	Fifth	3	16,567.47
	Sixth	1	4,982.70
	Seventh	4	19,916.96
Syrian Arab Republic	Fifth	2	12,456.74
	Sixth	2	22,942.01
	Seventh	6	45,006.39

Country or international organization	Instalment	Total number of claims affected	Amount of net effect (US$)
Tunisia	Sixth	2	10,051.90
	Seventh	7	9,732.96
United Kingdom	Fourth	2	9,582.01
	Sixth	3	569.71
	Seventh	4	8,812.94
Yemen	Seventh	7	21,722.08
UNDP Jerusalem	Seventh	1	4,844.29
UNDP Kuwait	Second	2	20,242.22
	Sixth	14	126,194.43
Total		1,727	5,278,147.15

2. Change of submitting entity

20. At the request of the Government of Canada and with the agreement of UNRWA Gaza, two claims submitted by UNRWA Gaza, one approved in the sixth instalment and another approved in the seventh instalment, have been transferred to the Government of Canada.

21. At the request of the Government of Sudan and with the agreement of UNHCR Germany, one claim submitted by Sudan and approved in the sixth instalment, has been transferred to UNHCR Germany.

Table 3. Change of submitting entity for reporting and payment of claims

Country or international organization	Number of claims reported	Instalment	Previous total recommended award (US$)	Corrected number of claims	Corrected total recommended award (US$)
UNRWA Gaza	106	Sixth	2,623,050.49	105	2,574,693.22
Canada	241	Sixth	9,327,549.62	242	9,375,906.89
Sudan	2,061	Sixth	21,744,728.88	2,060	21,727,179.54
UNHCR Germany	-	Sixth	-	1	17,549.34
UNRWA Gaza	246	Seventh	6,796,892.02	245	6,767,301.03
Canada	258	Seventh	11,943,883.83	259	11,973,474.82

3. Correction of typographical errors in decision 85

22. As a result of typographical errors in the entry of amounts reported in the eighth article 41 report (S/AC.26/1999/19) and its related Governing Council decision 85 (S/AC.26/Dec.85 (1999)), the following corrections to the country award totals for one country in the fifth instalment and one country in the sixth instalment are noted below. The revised total award amounts provided in tables 7 and 8 of decision 85 for the fifth and sixth instalments were correctly stated.

Table 4. Correction of typographical errors for country award totals reported in S/AC.26/Dec.85 (1999)

Country or international organization	Instalment	Total reported in S/AC.26/Dec.85 (1999)	Corrected total (US$)
New Zealand	Fifth	64,413.86	46,992.01
Israel	Sixth	177,586.52	177,586.92

4. Changes to country award totals for the first instalment

23. Finally, the total award amounts per country or submitting entity that were approved for claims included in the first instalment in Governing Council decision 25 and subsequent corrections decisions vary in some cases by a few United States dollars from the sum of the totals of individual claims awarded. It has been verified that these variations are the result of different rounding conventions used during the processing and reporting of first instalment claims. While results have been internally reconciled on an individual claim award level, 2/ it is recommended that the minor changes to the amounts listed in column three of the table below be approved by the Governing Council.

2/ The total amounts for country awards in respect of claims approved in the first instalment of category "C" claims were rounded up manually. The results were then entered into an electronic spreadsheet. While the total amounts by country were reported as rounded to the nearest full United States dollar amount, and were based on the unrounded amounts of individual claim awards, confidential individual claim awards were reported to submitting Governments and international organizations as rounded to their nearest full United States dollar amount. When the total amount of individual claim awards in their nearest full United States dollar amount was calculated and compared with the amounts stated in the relevant Governing Council decisions, discrepancies were detected. The corrections proposed in table 5 are intended to address these reporting discrepancies now that all the information relating to losses in the first instalment has been put into the Commission's database.

Table 5. Report of variations caused by rounding conventions in first instalment country totals

Country or international organization	Country total reported in S/AC.26/Dec.25 (1994), as modified by subsequent corrections, where applicable	Country total (sum of individual claim totals)
Australia	1,919,706.00	1,919,705.00
Denmark	1,595,504.00	1,595,505.00
Kuwait	11,403,258.00	11,403,243.00
Nepal	31,963.00	31,962.00
Pakistan	17,768,886.00	17,768,858.00
Poland	852,211.00	852,210.00
United Kingdom	5,310,759.00	5,310,760.00
United States	10,522,623.00	10,522,630.00
Yugoslavia, Federal Republic of	616,860.00	616,861.00

Annex I

CORRECTED CATEGORY "A" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 2-11, supra, the category "A" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. First instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
France	989,500.00	986,500.00
India	25,043,000.00	25,040,500.00
Sri Lanka	25,114,500.00	25,093,000.00

Table 2. Second instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Sri Lanka	77,298,500.00	77,198,500.00

Table 3. Third instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Kuwait	104,620,000.00	104,615,000.00
Sri Lanka	52,421,000.00	52,357,000.00

Table 4. Fourth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Australia	85,500.00	93,500.00
Egypt	207,343,500.00	207,341,000.00
France	138,000.00	128,000.00
India	146,328,000.00	146,300,000.00
Philippines	30,465,000.00	30,260,500.00
Sri Lanka	71,728,000.00	69,796,500.00
Sudan	10,223,500.00	10,221,000.00

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
UNHCR Germany	0.00	2,500.00
UNRWA Gaza	687,000.00	691,000.00

Table 5. Fifth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Bosnia and Herzegovina	3,528,000.00	3,476,000.00
Canada	409,000.00	414,000.00
India	147,801,500.00	147,616,500.00
Philippines	31,112,000.00	31,108,000.00
Sri Lanka	72,105,000.00	71,533,000.00
Thailand	10,592,000.00	10,552,000.00
Yugoslavia, Federal Republic of	3,790,500.00	3,794,500.00
UNWRA Gaza	736,000.00	731,000.00

Table 6. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Bangladesh	65,943,500.00	65,852,500.00
Bosnia and Herzegovina	2,060,000.00	1,780,000.00
Egypt	18,651,000.00	18,636,000.00
France	23,000.00	20,500.00
India	17,418,500.00	17,327,500.00
Iran	5,565,000.00	5,482,500.00
Jordan	17,527,500.00	17,522,500.00
Morocco	2,561,500.00	2,554,000.00
Pakistan	46,279,000.00	46,258,000.00
Philippines	60,810,000.00	60,714,500.00
Sri Lanka	36,643,000.00	36,403,000.00
Sudan	509,500.00	512,000.00
Turkey	1,552,500.00	1,550,000.00

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Viet Nar	3,492,000.00	3,496,000.00

2. Based on the above corrections, the revised category "A" claim total recommended awards by instalment are as follows:

Table 7. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (US$) a/	Corrected total recommended award (US$)
First	189,633,000.00	189,606,000.00
Second	641,352,500.00	641,252,500.00
Third	531,571,000.00	531,502,000.00
Fourth	734,839,000.00	732,674,500.00
Fifth	785,391,000.00	784,542,000.00
Sixth	317,188,000.00	316,261,000.00

---

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38 and 67 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996) and S/AC.26/Dec.67 (1999)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79 and 85 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), (S/AC.26/Dec.79 (1999) and (S/AC.26/Dec.85 (1999)).

Annex II

CORRECTED CATEGORY "C" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 12-23, supra, the category "C" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. First instalment category "C" claims corrections

Country or international organization	Country total reported in S/AC.26/Dec.25 (1994), as modified by subsequent corrections, where applicable	Country total (sum of individual claim totals)
Australia	1,919,706.00	1,919,705.00
Denmark	1,595,504.00	1,595,505.00
Kuwait	11,403,258.00	11,403,243.00
Nepal	31,963.00	31,962.00
Pakistan	17,768,886.00	17,768,858.00
Poland	852,211.00	852,210.00
United Kingdom	5,310,759.00	5,310,760.00
United States	10,522,623.00	10,522,630.00
Yugoslavia, Federal Republic of	616,860.00	616,861.00

Table 2. Second instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Bangladesh	12,161,510.90	12,168,258.30
India	70,365,172.62	70,389,572.27
Jordan	38,667,291.51	38,902,796.72
Lebanon	26,532,492.94	26,548,582.90
Sudan	5,217,538.58	5,222,521.28
UNDP Kuwait	5,605,638.03	5,625,880.25

Table 3. Fourth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
India	45,880,225.91	45,946,993.90
Italy	397,973.21	402,005.21
Jordan	24,207,836.54	24,307,865.58
Pakistan	12,007,471.90	12,019,824.84
United Kingdom	13,229,907.33	13,239,489.34

Table 4. Fifth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
India	67,698,665.21	67,715,447.22
Jordan	94,089,135.96	94,381,201.82
Lebanon	2,408,758.24	2,450,280.73
New Zealand	64,413.86	46,992.01
Pakistan	7,859,267.78	7,863,835.25
Philippines	7,871,819.05	7,890,192.76
Sudan	15,959,540.47	15,976,107.94
Syrian Arab Republic	100,327,919.47	100,340,376.21

Table 5. Sixth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Bangladesh	21,453,766.13	21,459,510.08
Canada	9,327,549.62	9,386,296.50
India	104,814,938.57	104,850,234.19
Iran	12,651,680.06	12,658,608.86
Israel	177,586.52	177,586.92
Italy	979,859.67	1,002,281.82
Jordan	180,418,308.14	180,891,651.27
Lebanon	11,852,210.70	11,898,155.19
Pakistan	37,330,539.19	37,397,445.24

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Philippines	10,691,744.59	10,698,665.00
Poland	1,933,492.85	1,958,759.29
Sudan	21,744,728.88	21,732,162.24
Syrian Arab Republic	95,547,753.26	95,570,695.27
Tunisia	3,337,545.82	3,347,597.72
United Kingdom	22,200,180.09	22,200,749.80
UNDP Kuwait	10,258,187.89	10,384,382.32
UNHCR Germany	-	17,549.34
UNRWA Gaza	2,623,050.49	2,574,693.22

Table 6. Seventh instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Australia	1,724,954.90	1,732,428.95
Bangladesh	37,706,783.84	37,746,419.68
Belgium	231,802.31	245,818.82
Canada	11,943,883.83	11,973,474.82
China	125,249.57	125,249.57
Egypt	231,251,021.36	231,246,647.69
Finland	298,228.83	332,647.98
India	186,796,893.79	186,928,200.34
Iran	27,084,712.23	27,095,092.06
Jordan	281,071,994.02	281,494,326.55
Kuwait	787,212,263.25	787,939,426.70
Pakistan	72,551,534.16	74,552,547.72
Philippines	10,343,737.26	10,349,808.76
Poland	716,179.29	731,511.47
Sri Lanka	5,287,797.86	5,284,164.64
Sudan	14,812,062.58	14,831,979.54
Syrian Arab Republic	56,939,952.32	56,984,958.71
Tunisia	8,414,977.79	8,424,710.75

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
United Kingdom	28,867,341.93	28,876,154.87
Yemen	79,177,795.01	79,199,517.09
UNDP Jerusalem	4,334,780.44	4,339,624.73
UNRWA Gaza	6,796,892.02	6,767,301.03

Table 7. Revised total recommended awards for category "C" claims

Instalment	Previous total recommended award (US$) a/	Corrected total recommended award (US$)
First b/	51,086,479.00	51,086,478.00
Second	431,155,375.79	431,463,342.93
Fourth	654,256,442.61	654,449,206.59
Fifth	734,670,391.22	735,072,726.97
Sixth	763,011,685.12	763,875,585.72
Seventh	1,928,144,235.51	1,931,655,410.19

---

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52, 70 and 85 (S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.70 (1999) and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52 and 85 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998) and S/AC.26/Dec.85 (1999).

b/ The previous total recommended award shown above and in table 11 of decision 85 for the first instalment had been calculated taking into consideration different rounding conventions as explained in paragraph 23 above in the present report. If these were not taken into consideration, the difference between the previous and the corrected total recommended award in this table would be US$36 which would correspond to the difference resulting from the variations listed in table 1 of this annex.

UNITED NATIONS

S

Security Council

Distr.
GENERAL

S/AC.26/2000/11
15 June 2000

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART TWO OF THE FOURTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES ABOVE US$100,000 (CATEGORY "D" CLAIMS)

GE.00-61859

CONTENTS

	Paragraphs	Page
Introduction	1 - 4	3
I. BACKGROUND	5 - 8	3
A. Background information	5 - 6	3
B. General legal framework	7	4
C. Applicable evidentiary standard	8	4
II. D7 CLAIMS	9 - 28	4
A. Claim form requirements	9 - 12	4
B. Description of D7 claims in part two of the fourth instalment	13 - 25	5
C. Procedural history	26 - 28	6
III. D7 METHODOLOGY	29 - 67	7
A. Ownership, loss and causation test	29	7
1. Ownership	30 - 33	7
2. Loss and causation	34 - 38	8
B. Compensation methodology	39 - 44	9
1. Adjustment process	45 - 46	10
2. Assessment process	47 - 51	11
3. Valuation process	52 - 67	12
(a) Claims for estimated and actual cost of repair	53 - 59	12
(b) Claims for loss of rental income and loss of anticipated rental income	60 - 63	14
(c) "Other" losses	64 - 66	14
(d) Calculation of recommended amounts	67	15
IV. CROSS-CATEGORY ISSUES	68 - 71	15
V. RECOMMENDATIONS	72 - 75	16
A. Recommended compensation	72	16
B. Interest and exchange rates	73 - 74	16
C. Submission through the Executive Secretary to the Governing Council	75	16
Notes		17

Introduction

1. This is the eighth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above US$100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of part two of the fourth instalment, comprising 200 of the 1,050 category "D" claims in the fourth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 26 January 1999. 2/

2. Part two of the fourth instalment comprises 200 claims for real property losses ("D7 claims") only, submitted by the Government of Kuwait. There are approximately 2,800 D7 claims in category "D". Ninety-five per cent of the D7 claims were submitted by the Government of Kuwait. For that reason the Panel has developed a methodology to apply to the Kuwaiti D7 claims only. The remaining 5 per cent of the claims will be subject to a case by case review by the Panel, applying the general principles developed for the Kuwaiti claims, in so far as it is appropriate to do so.

3. The 200 claims were chosen as a representative sample of Kuwaiti D7 claims, and in view of the complex legal and valuation issues involved in resolving them, the Panel designated the 200 claims as "unusually large or complex" pursuant to article 38(d) of the Rules, and has reviewed them within a period of twelve months.

4. The Panel commenced its review of the fourth instalment on 26 January 1999. In addition to regular communications, the Panel met at the Commission's headquarters in Geneva to consider the claims on the following dates: 25-26 January 1999, 22-24 March 1999, 26-27 April 1999, 24-26 May 1999, 18-21 July 1999, 6-8 September 1999, 15-17 November 1999, 20-21 December 1999 and 27-29 January 2000. Members of the Panel also visited Kuwait during 18-21 March 1999. During the visit, they met with a number of Kuwaiti Government officials and obtained information relevant to the resolution of category "D" claims.

I. BACKGROUND

A. Background information

5. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in part two of the fourth instalment is set out in detail in the Panel's First and Second Reports. 3/

6. The Panel has taken into consideration additional relevant material, including information accompanying the submission of these claims provided

by the Executive Secretary pursuant to article 32 of the Rules, and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

B. General legal framework

7. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

8. The issue of the evidentiary standard to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. 4/ The Panel's recommendations in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 5/ As with previous instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damage caused as a direct result of its invasion and occupation of Kuwait.

II. D7 CLAIMS

A. Claim form requirements

9. The D7 page of the category "D" claim form provides for three types of real property losses, namely:

(a) Estimated cost of repair work not yet completed;

(b) Actual cost of repair work already completed; and

(c) Other (e.g., loss of rental income).

10. Claimants are required to identify the type of property, the name of the owner as it appears on the title deeds or other instruments of title, the date of purchase and the percentage of the claimant's ownership.

11. In addition, details of the property, including the address, official registration number, age of the structure, and floor space, must be provided. Claimants must also state the estimated value of the property as at 1 August 1990 and the original cost, including improvements.

12. The claim form requires claimants to attach documentary and other appropriate evidence such as proof of ownership, repair costs, copies of rental contracts and to include a sworn statement describing what happened

to the property. Where applicable, mortgage information and documentation should also be provided.

B. Description of D7 claims in part two of the fourth instalment

13. As stated above, the 200 D7 claims in part two of the fourth instalment were filed by the Government of Kuwait which, through its Public Authority for the Assessment of Compensation Resulting from Iraqi Aggression ("PAAC"), assisted claimants in the preparation of claims for all losses.

14. Pursuant to the widespread damage caused to real property in Kuwait as a result of Iraq's invasion and occupation, the claims cover losses in respect of eight types of real property identified to date from the claims reviewed: villas and houses; chalets and beach houses; apartment buildings; shops; offices; factories and warehouses; farm buildings; and garages.

15. Claims have been put forward in respect of physical damage based on estimated or actual cost of repairs. Some claimants had not undertaken repairs to their property at the time of filing their claims and submitted claims based on the estimated cost of undertaking the repairs. Most claimants had carried out the repairs and were able to claim the actual costs incurred.

16. Under the loss type "other", the majority of claimants have claimed for loss of rental income in respect of apartment buildings, which were vacated when tenants left Kuwait. In a number of cases, tenants simply failed to pay rent due to civil disorder. A small number of claims are for loss of anticipated rental income where claimants had either completed the construction of premises, which were not yet occupied, or for buildings that were due to be completed during the period of the occupation.

17. In addition, there are claims under the loss type "other" for contract interruption losses in relation to construction projects that were in progress and interrupted as a result of the invasion. These encompass claims for site restoration costs, stolen materials and equipment, and increased construction costs.

18. As with other loss types in category "D", some D7 claimants have submitted part of their losses for compensation in category "C" and are claiming the remainder in category "D". Other claimants have claimed all their losses in category "D".

19. Many of the properties were owned by more than one person. In that case, either the claimants are claiming solely for losses relating to their own share of the property or, in most cases, they are also claiming on behalf of the other joint owners who have authorised them to do so.

20. Many claimants are claiming for more than one property, and in each case have submitted a separate claim form for each property. Claimants are also claiming for different types of losses in respect of the same property, as in cases where an apartment building that was damaged was the subject of both a claim for estimated or actual cost of repairs and for loss of rental income.

21. Due to the period of time that has elapsed since claimants submitted their claims for estimated cost of repairs, the Panel considered it likely that many of the claimants would by now have completed the repairs, and would have proof of actual costs incurred. Members of the Panel who visited Kuwait found that generally most of the buildings had been restored. In the light of this fact, the Panel instructed the secretariat to write to all claimants who submitted claims for estimated cost of repairs requesting them to provide proof of actual costs incurred, or an explanation as to why the repairs had not been carried out after liberation.

22. Most of the D7 claims have been well substantiated in accordance with guidelines provided by PAAC, and generally have been presented in a systematic way. The majority of claimants have submitted a variety of documents in support of their claims. In addition to personal and witness statements describing what happened to their properties, claimants have submitted evidence of their ownership or leasehold interests in the form of title deeds, sales contracts, Housing Authority Distribution Forms, 6/ copies of loan contracts where claimants were the recipients of government land, 7/ irrevocable powers of attorney, 8/ and lease agreements.

23. During their visit to Kuwait, members of the Panel were informed of the comprehensive system at the Kuwaiti Ministry of Justice for the registration of various ownership interests. The Ministry is able to provide claimants with copies of documents on its files.

24. As the rebuilding work took place after Iraq's invasion and occupation of Kuwait, claimants were able to supply post-invasion documents evidencing their losses. In respect of claims for estimated or actual cost of repairs, claimants submitted estimates, bid proposals, invoices, and contracts in support of claims and loss adjuster's and civil engineer's reports assessing the damage and the reasonableness of the amounts claimed. In addition, some claimants submitted video tapes and photographs depicting the state in which they found their properties upon their return to Kuwait.

25. Claimants submitted rental contracts, rent receipts, and utility bills in support of claims for loss of rental income. Where a claim was made for a number of units in one or several buildings, claimants included rental summaries listing each property and submitted documents in respect of each unit contained in a building.

26. The Panel determined that a claim submitted by an individual in respect of real property owned by a charitable organization should be treated as one submitted by that organization. The claim was therefore transferred to the E4 Team, which is processing Kuwaiti claims submitted by corporations and other legal entities.

C. Procedural history

27. In developing the methodology for resolving D7 Kuwaiti claims, the Panel has applied many of the principles that it adopted for the resolution of D4(Personal Property) claims in its "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)". 9/

28. The D7 methodology comprises two parts. Part one is designed to assess the compensability of the claim and part two determines the amount of compensation to be recommended. The first part is the ownership, loss and causation test. If this is established, the second part is the compensation methodology that has four stages:

(a) adjustment;

(b) assessment;

(c) valuation; and

(d) calculation of the recommended amount.

29. The Panel was assisted by expert loss adjusting and accounting consultants in the development of the compensation methodology.

III. D7 METHODOLOGY

A. Ownership, loss and causation test

30. Under the ownership, loss and causation test the claimant is required to prove:

(a) that he or she had an ownership or other proprietary interest in the property that is the subject of the D7 claim;

(b) the loss and/or other damage that gave rise to the claim; and

(c) that such loss and/or damage occurred as a direct result of Iraq's invasion and occupation of Kuwait.

1. Ownership

31. During its mission to Kuwait, members of the Panel learned that the majority of Kuwaiti D7 claims are based on three different types of proprietary interests in real property. They are as follows:

(a) freehold ownership; 10/

(b) ownership interest resulting from the execution of an irrevocable power of attorney, which is a widely used method of transferring ownership in Kuwait; and

(c) leasehold interest in government owned land, upon which the tenant has built chalets, farms or other approved structures. 11/

32. To be eligible for compensation, the claimant must establish that he or she had a proprietary interest in the subject real property, as at 1 August 1990. While many claimants submitted documents that proved their ownership or leasehold interests at the time when they bought the property or first leased it, many did not have documents contemporaneous with Iraq's invasion of Kuwait. A system was therefore devised with PAAC whereby verification of freehold interests and interests under irrevocable powers of attorney could be undertaken through the Kuwaiti Ministry of Justice, and in respect of leasehold interests through the Kuwaiti Ministry of Finance. In the present instalment only in one case did the certification by the Ministry of Justice not support the claim.

33. With respect to the types of evidence deemed sufficient to establish an ownership or leasehold interest, the claimant must provide one or more of the following documents, depending upon the type of interest asserted:

(a) A certified copy of a title deed in respect of freehold ownership;

(b) A certificate issued by the Real Estate Registration and Certification Department of the Ministry of Justice in Kuwait which establishes the fact that the claimant was the owner of the property on or about 1 August 1990;

(c) A certificate issued by the Real Estate Registration and Certification Department of the Ministry of Justice which establishes that the claimant had de facto ownership of the property on or about 1 August 1990 arising from an irrevocable power of attorney executed in favour of the claimant; and

(d) A certified copy of a leasehold agreement between the claimant and the Ministry of Finance in Kuwait or a certificate issued by the Ministry of Finance, which establishes that the claimant was the leaseholder of the property on or about 1 August 1990.

34. The Panel notes that, depending upon the facts presented in a claim, there may be other types of evidence which may be deemed sufficient to establish the requisite proprietary interest in the subject property.

2. Loss and causation

35. The majority of claims arise out of situations where real property was damaged, or claimants could not recover rent. The Panel established separate criteria for loss and causation in respect of claims for estimated or actual cost of repairs, and claims for loss of rental income.

36. With respect to claims for estimated and actual repair costs, the Panel has determined that the fact of loss and direct causation will be considered to have been proved where the claimant provides a personal statement describing the circumstances and nature of the loss and referring to one or more of the circumstances enumerated in paragraph 6 of Governing Council decision 7, 12/ together with one or more of the following types of evidence:

(a) A witness statement that corroborates the claimant's description of the loss suffered;

(b) An invoice, bid/proposal, contract, loss adjuster's report or other similar type of document which refers to the damage for which compensation is being claimed; and

(c) A photograph or video tape showing the damage.

37. In respect of claims for loss of rental income, the claimant must provide a personal statement describing the circumstances and nature of the rental loss, together with one or more of the following documents:

(a) A witness statement that corroborates the loss of rental income claim; and

(b) A rental contract, rental receipt, utility bills or other similar evidence which establishes that the affected property comprised rental units on or about the date of the invasion.

38. The Panel notes that depending upon the facts presented in a claim, there may be other types of evidence that may be deemed sufficient to meet the fact of loss and causation requirement.

39. Once the requisite ownership, loss and causation criteria set by the Panel have been satisfied, the next stage is the application of the compensation methodology, which encompasses the verification and valuation of the claim based on evidence of the quantum of the loss suffered by the claimant.

B. Compensation methodology

40. Based on the number and types of D7 losses claimed, the Panel has categorized claims into the following four main loss elements for purposes of developing the compensation methodology, namely:

(a) Estimated cost of repair work that has not yet been completed ("Estimated cost of repairs").

(b) Actual cost of repair work that has already been completed ("Actual cost of repairs");

(c) Loss of rental income, including loss of anticipated rental income. These claims are assessed on a per unit basis; and

(d) Other.

41. A standard methodology has been developed for claims falling under each of the loss elements (a) to (c) above. Claims falling under item (d), "Other", are to be dealt with on a case by case basis, so far as possible adopting the methodological principles of loss elements (a) to (c) above.

42. As stated in paragraph 21 above, all claimants who have submitted claims for estimated cost of repairs are requested to submit evidence of actual costs incurred. The responses are assessed to ascertain whether the claimant has undertaken the repairs, and if not, the reasons therefor. Where the repairs have been carried out and the costs are equal to or less than the estimated cost of repairs, the claim will be valued using the compensation methodology for actual cost of repairs. Where the claimant has incurred costs higher than those originally estimated, the claim is valued using, in general, the compensation methodology for estimated cost of repairs.

43. The Panel has determined that a substantial discount should be applied in assessing the recommended compensation where claimants fail to respond to requests for proof of actual costs incurred, or provide unsatisfactory explanations.

44. Some claimants submitted evidence that they were unable to carry out repairs as the property was in an area that had not been cleared of land mines and there was a Government of Kuwait prohibition on rebuilding the property. In other cases the property had been sold. In such cases no discount was applied.

45. The compensation methodology comprises four stages:

(a) Adjustment process;

(b) Assessment process;

(c) Valuation process; and

(d) Calculation of the recommended compensation.

1. Adjustment process

46. The first stage in the methodology is to identify errors or omissions in the claim. The adjustment process is concerned only with the data presented in the claim. It ensures that the claimed amount is correctly supported by existing documentation. This analysis identifies adjustments to be made in the following circumstances:

(a) Classification errors where the claimant has incorrectly identified the category of the loss;

(b) Exchange rate variances where an incorrect exchange rate has been applied to an original claimed amount, denominated in currencies other than Kuwaiti dinars ("KD");

(c) Arithmetical errors;

(d) Reconciliation of amounts where amounts detailed in supporting documents differ from the amounts stated on the D7 page; and

(e) Duplicated claims where elements of the claim are duplicated within the D7 claim and/or between the D7 claim and other category "D" loss types and/or between the D7 claim and other claim categories.

47. The resulting figure is known as the "adjusted value". The review undertaken as part of the Adjustment process also allows the identification of missing or additional documentation that may affect the adjusted value during the next stage, which is the "assessment process".

2. Assessment process

48. The assessment process tests the existence and validity of all evidence provided in support of the claim. The Panel has developed specific assessment matrices for each loss element to ensure that all relevant aspects of the claim documentation are considered in the review process. The matrices cover the following loss elements:

(a) Estimated cost of repair;

(b) Actual cost of repair; and

(c) Loss of rental income, including loss of anticipated rental income.

49. Due to the fact that the "Other" loss element covers unspecified claims, no standard assessment matrix has been developed for that loss element. However, the assessment process for claims in the "Other" category reflects, as practically as possible, the assessment processes prescribed for the three specifically defined losses stated above.

50. In its review of the different types of losses, the Panel has determined that certain documents are essential to the analysis and assessment of the claim. The lack of such a document will lead to a deduction factor applied to the adjusted value. Deduction factors for the lack of such documents are all calculated on a pro rata basis depending on the proportion of the amount claimed for which there are no compulsory documents.

51. In addition to the above documents, the Panel has determined that there are other documents, which although not compulsory, serve to further substantiate the claim. The inclusion of these documents will result in an "add back" factor to the adjusted value in all types of claim except for loss of anticipated rent. Add backs can be calculated on either a pro rata or an absolute basis, as appropriate.

52. The total of all negative and positive adjustments gives rise to an assessment score. The assessment score is expressed as a percentage and is to be applied to the adjusted value.

3. Valuation process

53. The valuation process ensures a careful analysis and valuation of the adjusted claim, and allows the application of technical valuation principles to the adjusted value. In all cases, the Valuation score is expressed as a percentage, to be applied to the adjusted value. The steps applied at the valuation stage depend on the type of loss being claimed, as is next shown.

(a) Claims for estimated and actual cost of repair

54. Similar principles apply to the valuation process for both of these types of claim. The purpose of the process is to calculate a value for the claim that reflects the value of the property as at 1 August 1990.

55. In order to determine that value, the Panel was assisted by its expert consultants in the development of benchmark rebuilding costs in Kuwait as at 1 August 1990. The Panel established five benchmark categories representing the substructure, superstructure, internal finishes, fittings and services applicable to each of the eight types of real property as set out at paragraph 14 above. Using data on the cost of materials and labour as at 1 August 1990, and the benchmark categories, the Panel determined the typical rebuilding costs per square metre as at 1 August 1990 for each type of property.

56. As part of the valuation process, the Panel also set parameters for categorizing the nature of the repairs undertaken by the claimant, so as not to compensate for improvements to the property. The Panel established percentage criteria to be applied in determining whether the rebuilding work undertaken by the claimant should be classified as repairs, reconstruction or improvement. For each category of work, an appropriate depreciation factor is applied.

57. The depreciation factors are calculated by taking into account the age of the property as at 1 August 1990 and its estimated useful life. The useful life for each of the eight types of property was established in accordance with the state of the real property market in Kuwait as at 1 August 1990. The useful life of each property varies depending on the type of property. For example, the useful life for leased property is shorter than for property that is owner occupied.

58. In addition to setting benchmark criteria for typical rebuilding costs and depreciation factors, the Panel also determined inflation factors to be applied for purposes of adjusting the costs to reflect the impact of inflation between 1 August 1990 and the date on which the work was actually performed. In the case of estimated cost of repair claims, the date that the work was performed is deemed to be the date of the estimate or supplier/contractor contract.

59. The valuation process provides for a deduction to reflect any improvements to the property, where appropriate.

60. Taking into account the factors stated in paragraphs 54-58 above, the basic stages of the valuation process are as follows:

(a) Stage 1. The August 1990 benchmark rebuilding cost for the property is calculated by multiplying the floor area of the property in square metres by the standard benchmark rate for the type of property;

(b) Stage 2. The adjusted value of the claim is deflated to August 1990 prices by using an inflation rate based on the date of the estimate/payment;

(c) Stage 3. The status of the work carried out is established by dividing the adjusted deflated cost of repair by the benchmark rebuilding cost; and

(d) Stage 4. Where a claimant has not responded to a request for details of actual costs, or not provided satisfactory reasons, the adjusted claim is first deflated to August 1990 prices; it is then subjected to the depreciation factor based on the age of the property; and finally reduced by applying the discount factor to reflect the additional risk.

(b) Claims for loss of rental income and loss of anticipated rental income

61. Similar principles apply to the valuation process for claims for loss of rental income and loss of anticipated rental income. The purpose of the process is to consider the claim on a commercial basis, taking into account the period of the claim, the monthly rental amount and saved/discontinued expenses such as the cost of caretaking, air conditioning and sundry maintenance costs.

62. Saved/discontinued expenses are deducted from the claim. It is assumed that costs of air conditioning, caretaking services, elevator and sundry maintenance expenses would not have been levied or paid during the period for which compensation is being recommended. Where the claimant has not deducted these expenses from the claim, a fixed amount per month will be deducted depending on the number of units in the building.

63. The compensation period is limited to a maximum of 12 months unless the Panel determines that exceptional circumstances exist, for example in the case of large building projects.

64. For claims for loss of anticipated rental income, the date of completion of the building is also taken into consideration when calculating the period of the claim.

(c) "Other" losses

65. The valuation principles applied in such cases reflect the principles of the above specific loss types. Claims for loss of building materials are processed in the same way as claims for actual cost of repairs, but no depreciation is applied as the building materials are considered to have been new as at 1 August 1990.

66. With respect to claims for contract interruption losses, the Panel has had the advantage of examining the principles developed by the category "F3" Panel of Commissioners in its "Report and Recommendations Concerning the First Instalment of "F3" Claims". 13/ At paragraph 62 of that report, the "F3" Panel found that there was a general increase in the price of goods and services in Kuwait due to many factors, the precise effect of which it was impossible to identify. However, it found that price increases could be deemed to have been linked directly to Iraq's invasion and occupation of Kuwait in respect of the following costs:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs. 14/

67. Being in agreement with the above principles, the Panel therefore determines that claims for price increases relating to the above types of costs are compensable.

(d) Calculation of the recommended compensation

68. In calculating the recommended compensation, all of the steps stated above are followed to arrive at the recommended compensation, showing the adjusted value, the assessment and the valuation scores by loss element, and the final amount of recommended compensation for each D7 page.

IV. CROSS-CATEGORY ISSUES

69. As with D4(PP) claims, the Panel has identified D7 claims where claimants have claimed part of the claim for real property losses in category "C" and the remainder in category "D", which were defined as "spillover" claims in paragraph 53 of the Panel's Fourth Report. With respect to D7 claims, the Panel has identified spillover claims where claimants are seeking separate and distinct losses in category "D" and those where it is not possible to distinguish between what is being claimed in category "C" and what is claimed in category "D".

70. Where the D7 claim is separate and distinct from the C7 claim, the Panel values the D7 claim only. Where it is not possible to distinguish between what is claimed on the C7 page and the D7 page in respect of the same property, the combined C7 and D7 amounts will be subject to the D7 methodology. The assessment and valuation scores thus obtained will then be applied to the D7 claim only to obtain the recommended D7 compensation.

71. The Panel has also identified claims where claimants have duplicated C7 losses claimed in category "C" and D7 losses claimed in category "D". The D7 claim will be assessed to determine the extent to which it duplicates the C7 claim. Where the amount that is duplicated is less than US$100,000.00, the duplicated amount is to be deducted from the D7 claim during the adjustment process and the balance, if any, will be subject to the D7 methodology.

72. Where the amount that is duplicated is greater than US$100,000.00, the D7 methodology is to be applied to the whole of the D7 claim, including the duplicated amount, and the corresponding amount awarded in category "C" is then deducted from the recommended D7 award.

V. RECOMMENDATIONS

A. Recommended compensation

73. As stated previously above, all the 200 D7 claims covered by this report were submitted by the Government of Kuwait. Against the total amount claimed of US$73,437,225.43, the Panel has recommended compensation totalling US$57,659,045.08.

B. Interest and exchange rates

74. The Panel recommends that interest be awarded pursuant to its determinations as set out in paragraphs 64-65 of its First Report.

75. For purposes of calculating recommended amounts, the Panel has converted currencies into United States dollars in accordance with the rates set out in paragraphs 61-63 of the First Report.

C. Submission through the Executive Secretary to the Governing Council

76. The Panel respectfully submits this report pursuant to article 38(e) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 29 January 2000

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ The "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Fourth Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1999/21) was approved by the Governing Council in December 1999 pursuant to Governing Council Decision S/AC.26/Dec.81 (1999)

3/ See in particular chapter II of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1) ("First Report") and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[s]ince ... [D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(2) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ Housing Authority Distribution Forms provide details of a property conveyance by the Kuwaiti Housing Authority to a citizen of Kuwait.

7/ Loan contracts are issued by a bank in respect of interest-free loans to Kuwaiti citizens, who are recipients of government land, for the specific purpose of building a residence on that land.

8/ An irrevocable power of attorney permits the transfer of legal control of real estate, tantamount in many respects to a transfer of legal ownership, without a corresponding change in nominal title to the property. The effect of an irrevocable power of attorney is that, upon its execution, the ownership interest in the property described in the instrument is deemed to be immediately vested in the named beneficiary. Although the ownership rights resulting from the execution of an irrevocable power of attorney are not as unequivocal as a registered conveyance, it is nonetheless a widely accepted customary practice in Kuwait.

9/ S/AC.26/1998/15 ("Fourth Report").

10/ With respect to privately owned (freehold) real property, Kuwait's ownership verification process is based on a registration system. The Kuwaitis use the "Torrens" system, named after Richard Robert Torrens. This system is based on the use of a certificate of title, a document issued by an official of state or local government, which states the identity of the owner(s) of the title. All privately owned property is registered with the Real Estate Registration and Certification Department of the Ministry of Justice. Any transactions affecting the owner's interest in the property are required to be registered with the Department. To register a transaction, the applicant must pay registration fees which vary depending on the type of transaction to be registered (e.g 0.5 per cent of the contract price for registering a conveyance). Once registered, the Department, through its computer database and manual filing system, updates the ownership information in accordance with the registration made.

11/ By entering into a lease with the government, the tenant establishes the ownership of the structures erected on the leased land.

12/ S/AC.26/1991/7/Rev.1.

13/ S/AC.26/1999/24 (the "F3 Report")

14/ See para.62 of the F3 Report. The "F3" Panel determined that increased transport costs arise because some of Kuwait's ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

UNITED NATIONS

S

Security Council

Distr.
GENERAL

S/AC.26/2000/12
15 June 2000

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES ABOVE US$100,000 (CATEGORY "D" CLAIMS)

GE.00-61901

CONTENTS

	Paragraphs	Page
Introduction	1 - 3	3
I. BACKGROUND	4 - 7	3
A. Background information	4 - 5	3
B. General legal framework	6	3
C. Applicable evidentiary standard	7	3
II. NEW ISSUES ARISING IN APPLICATION CLAIMS	8 - 15	4
A. Jurisdictional issues	9	4
B. D1(Money) issues: Claim for departure costs	10	4
C. D1(Money)issues: Claim for relocation expenses	11 - 12	4
D. D1 MPA issues: Claim for illegal detention	13	5
E. D3(Death - Medical Expenses, Support and Mental Pain and Anguish)	14 - 15	5
III. PANEL DETERMINATIONS ON OTHER CLAIMS IN THE FIFTH INSTALMENT	16 - 20	5
IV. CROSS CATEGORY ISSUES	21	6
V. RECOMMENDATIONS	22 - 33	7
A. Awards by submitting entity	22	7
B. Interest and exchange rates	23 - 25	7
C. Corrections to previously reported claim awards	26	7
1. Part one of the first instalment correction	27	7
2. Part one of the second instalment corrections	28 - 30	8
3. Third instalment corrections	31 - 32	8
D. Submission through the Executive Secretary to the Governing Council	33	9
Notes		10
Annex		12

Introduction

1. This is the ninth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above US$100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of the fifth instalment, comprising 520 category "D" claims, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 20 July 1999.

2. The 520 claims contain loss types for which methodologies have already been developed ("application claims") 2/.

3. The Panel began its review of the fifth instalment on 20 July 1999. In addition to regular communications, the Panel met at the Commission's headquarters in Geneva to consider the claims on the following dates: 18-21 July 1999, 6-8 September 1999, 15-17 November 1999, 20-21 December 1999 and 27-29 January 2000.

I. BACKGROUND

A. Background information

4. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in the fifth instalment is set out in detail in its First and Second Reports. 3/

5. The Panel has taken into consideration additional relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules, and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules. In addition, the Panel has been assisted by expert consultants in the valuation of claims for D4(personal property) losses.

B. General legal framework

6. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

7. The issue of the evidentiary standard to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. 4/ The Panel's recommendations

in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 5/ As with previous instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damage caused as a direct result of its invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN THE APPLICATION CLAIMS

8. Some of the application claims in this instalment raise new issues that were not dealt with in any of the Panel's previous reports. Wherever claims gave rise to new issues not considered in previous instalments, the Panel ensured that these were resolved so as to be consistent with established methodologies. These new issues and the Panel's determinations thereon are set out below.

A. Jurisdictional issues

9. The Panel considered a claim by an individual who was living in Saudi Arabia. He claimed personal property and income losses allegedly sustained as a result of his being deported together with his family from Saudi Arabia pursuant to a royal decree, on the grounds that he was suspected of collaborating with the Iraqis. The Panel determines that the claim is not compensable as the asserted losses did not occur as a direct result of Iraq's invasion and occupation of Kuwait.

B. D1(Money) issues: Claim for departure costs

10. The Panel considered a D1(money) claim for departure costs. The claim is for the costs of the claimant's airflight from Baghdad to Kuwait, incurred by the claimant in an effort to locate his luggage that did not arrive in Baghdad after his departure from Kuwait. The Panel determines that the claimant's flight to Kuwait to locate his lost luggage, and thereby mitigate his personal property loss, is compensable.

C. D1(Money) issues: Claim for relocation expenses

11. The Panel considered a D1(money) claim for relocation losses for a claimant and his family. The claim is for the costs incurred after departing Kuwait and relocating to Cyprus for one year before moving to Jordan. He claimed accomodation costs, comprising rent, electricity and water charges. The Panel determines that the claimant be awarded the maximum for relocation costs fixed by the Panel, being the equivalent of three months rental of the apartment and the water and electricity charges during that period. Rental expenses, water and electricity charges outside that period can not be considered relocation expenses of a temporary and extraordinary nature. 6/

12. The Panel considered a D1(money) claim for relocation costs for packing, shipping and customs duty expenses that the claimant incurred for the retrieval and delivery of his personal property in April 1993. The Panel determines that the claim is compensable as the claimant's retrieval of his personal property mitigated his personal property loss.

D. D1 MPA issues: Claim for illegal detention

13. The Panel considered a D1(MPA) claim for illegal detention. After the invasion, the claimant, a national from an OECD country, continued to work for his Iraqi employer as his employer advised him that it was less likely that he would be taken hostage if he was still working. The claimant considered this to be his illegal detention. The Panel determines that the claim for D1(MPA) is not compensable, as the claimant had agreed to continue working for his employer.

E. D3(death): Medical expenses, support and mental pain and anguish (MPA))

14. The Panel considered a D3(death) claim for medical expenses, support and mental pain and anguish for the birth of the claimant's stillborn child. The claimant alleged that the Iraqi staff running the Kuwaiti hospital where she gave birth to the child performed an unnecessary and unauthorized caesarean operation negligently which resulted in the child's death. A medical certificate from the hospital states that the child was stillborn. The Panel determines that the claimant had failed to establish a direct link between the stillborn birth of the child and the invasion and occupation of Kuwait and, as a consequence, the D3(death) claim for medical expenses is not compensable. The claimant was however compensated under D2(personal injury) for both MPA and her medical expenses for the serious personal injury she suffered due to the lack of post-operative care.

15. The Panel considered another D3(death) claim for support and MPA and a D2(personal injury) claim for medical expenses and MPA. The claimant, his parents and sisters were involved in a bus accident in Iraq while being evacuated from Kuwait. As a result of the accident, the claimant's parents died and the claimant's youngest sister sustained compound fractures to the left leg. The Panel, being in agreement with the principles set out in the Second "B" Report, determines that the death and personal injury claims are compensable. 7/ The Panel notes that the category "B" Panel of Commissioners took into consideration that many claimants involved in such accidents had no other choice but to try and reach their home by whatever means was available.

III. PANEL DETERMINATIONS ON OTHER CLAIMS IN THE FIFTH INSTALMENT

16. As was the case in part one of the fourth instalment, in the fifth instalment all the claims have been designated application claims. At each of its meetings in Geneva the Panel has therefore extensively reviewed individual claims, examined the application of the methodologies developed

by the Panel, and satisfied itself that the appropriate methodologies have been applied to the claims in the instalment.

17. Some claimants failed to submit any documentation in support of personal property losses, and have not responded to requests for additional information pursuant to article 34 of the Rules. Some claimants failed to prove their presence or residence in Iraq or Kuwait before or at the time of the invasion. The Panel determines that no compensation should be awarded for those claims. One claimant in the fifth instalment has withdrawn his claim.

18. The Panel deferred its consideration of a small number of claims because they contain loss types that cannot be resolved in the fifth instalment. These include claims for D8/9(business) losses for which a methodology is yet to be developed. In addition, the Panel has reviewed claims in this instalment with intangible property losses and has deferred them in order that further analysis can be undertaken and appropriate principles developed in considering such claims.

19. A number of claimants filed claims in category "D" specifically for interest on the value of their category "C" or "D" claims. In its First Report, the Panel recommended that interest be paid in accordance with Governing Council decision 16. 8/

20. The Panel has also considered a number of claims for claim preparation costs, including legal and loss adjusting fees. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claims for such costs.

IV. CROSS CATEGORY ISSUES

21. Recommended awards in respect of claims in this instalment are reported net of deductions of "A", "B" and "C" approved awards. 9/

V. RECOMMENDATIONS

A. Awards by submitting entity

22. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in the fifth instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, against the total amount claimed of US$119,969,976.38 the Panel has recommended compensation totalling US$45,865,923.46.

B. Interest and exchange rates

23. The Panel recommends that interest be awarded pursuant to its determinations as set out in paragraphs 64-65 of its First Report.

24. For purposes of calculating recommended amounts, the Panel has converted currencies into United States dollars in accordance with the rates set out in paragraphs 61-63 of its First Report.

25. In paragraph 39 of its Fifth Report, the Panel noted that where losses are claimed for money in currencies other than United States dollars and it is established that the application of the exchange rate approved by the Panel in its First Report would result in either under-compensation or over-compensation of the claimant, the Panel determined that it will select a conversion rate based on the evidence that most closely compensates the claimant for the value of the losses suffered. In particular, this would be applied in situations where the claimant has submitted evidence that he or she purchased the money at a rate different from the rate adopted by the Panel.

C. Corrections to previously reported claim awards

26. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel recommends approval of the corrected amounts as described in the following paragraphs. 10/ A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the submitting entities affected.

1. Part one of the first instalment correction

27. In respect of one D3(MPA) claim, a recommendation for an award was calculated on the basis that only the claimant was eligible for compensation. It has now been shown that the claim includes one other family member who is also eligible to receive a D3(MPA) award and the Panel

therefore recommends that an additional award be made. The concurrent recommended change to the submitting entity award is listed below:

Submitting entity	Previous recommended award (US$)	Corrected recommended award (US$)
Kuwait	1,059,075.26	1,062,425.26

2. Part one of the second instalment corrections

28. Four claims in part one of the second instalment require correction. In two of these claims, compensation was recommended for D1(MPA) on the basis that the claims were made only by the claimant who submitted the claim form. However, pursuant to a representation by the Government of Kuwait, made under article 41 of the Rules, the Panel recommends that awards should also be made for family members included in the claim. On the other hand, another claim submitted by the Government of Kuwait and approved in the same instalment was treated as a family claim for D3(death) losses, when in fact there was only one eligible claimant. This claim also requires correction.

29. The fourth claim to be corrected was submitted by the Government of India. In that claim, end of term indemnities were incorrectly deducted.

30. The concurrent recommended changes to the respective submitting entity awards are listed below:

Submitting entity	Previous recommended award (US$)	Corrected recommended award (US$)
India	393,986.27	400,041.27
Kuwait	1,728,458.48	1,697,556.67

3. Third instalment corrections

31. The Government of Kuwait, in its representation under article 41 referred to in paragraph 28 above, also identified two claims where family members were to be included in the individual's D1(MPA) claim. The Panel recommends this correction. The concurrent recommended change to the respective submitting entity award is listed below:

Submitting entity	Previous recommended award (US$)	Corrected recommended award (US$)
Kuwait	2,381,113.86	2,399,963.86

D. Submission through the Executive Secretary to the Governing Council

32. The Panel respectfully submits this report pursuant to article 38(e) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 29 January 2000

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ In the first instalment of category "D" claims, the Panel developed methodologies for the following loss types: D1(money); D1(mental pain and anguish ("MPA"); D3(death); D4(motor vehicles); D6(loss of income); D10(payment and relief to others); and D10(other). A full description of the methodologies is set out at paragraphs 103 to 380 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1) ("First Report"). The Panel developed methodologies for the following loss types in part one of the second instalment: D2(personal injury) and D5(loss of bank accounts, stocks and other securities). These methodologies are described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/11) ("Third Report"), in paragraphs 41-115. Further, the Panel developed the methodology for D4(personal property) losses in part two of the second instalment. This methodology is described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/15) ("Fourth Report"), in paragraphs 30-57.

3/ See in particular chapter II of the First Report and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[s]ince ... [category D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(c) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ See para.128 of the First Report.

7/ See paras 20-24 of the "Report and Recommendations made by the Panel of Commissioners Concerning Part One of the Second Instalment of Claims for Personal Injury or Death (Category "B" Claims)" (S/AC.26/1994/4).

8/ Paragraph 1 of decision 16 (S/AC.26/1992/16) states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." See also paras. 64-65 of the First Report.

9/ See para. 21 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Fourth Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1999/21).

10/ Article 41 states that:

"1) Computational, clerical, typographical or other errors brought

to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council

2) The Governing Council will decide whether any action is necessary. If it is determined that a correction must be made, the Governing Council will direct the Executive Secretary as to the proper method of correction".

Annex

SUMMARY RECOMMENDATIONS OF THE FIFTH INSTALMENT OF CATEGORY "D" CLAIMS

Submitting entity	Amount claimed (US$)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (US$)
Algeria	99,695.50	1	0	20,010.22
Australia	243,321.59	1	0	100,613.39
Austria	193,658.40	1	0	31,340.52
Canada	1,287,398.01	10	1 (1)	311,443.54
France	270,791.51	1	1	11,015.57
Germany	593,911.80	4	1	288,807.51
Greece	145,340.00	1	0	20,000.00
Iceland	-	0	(1)	-
India	38,145,753.53	179	30 b/ (5)	5,101,591.40
Ireland	840,918.00	1	1	167,759.24
Israel	-	0	(1)	-
Italy	692,887.58	3	0	128,363.61
Jordan	10,767,960.07	38	1 (1)	1,626,531.98
Kuwait	42,210,244.61	121	2 (5)	31,838,923.83
Lebanon	798,692.03	3	0	273,550.63
Morocco	101,785.20	1	0	65,875.76
Netherlands	-	0	(1)	-
Pakistan	1,422,430.60	5	(1)	617,591.08
Philippines	110,847.00	1	0	39,020.02
Poland	48,961.00	1	0	19,134.95
Sudan	1,927,272.21	13	(2)	367,002.85
Sweden	324,341.60	2	0	108,508.62
Syria	510,104.61	6	0	313,180.53
United Kingdom	13,112,235.51	33	6 (1)	2,007,252.42
United States of America	5,063,997.59	23	(2)	2,070,997.53

Submitting entity	Amount claimed (US$)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (US$)
UNDP Kuwait	134,993.08	1	0	106,407.11
UNDP Washington	80,719.96	2	0	2,076.00
UNHCR Canada	533,000.00	1	0	95,433.57
UNRWA Gaza	308,715.39	3	0	133,491.58
Total	119,969,976.38	456	43 (21)	45,865,923.46

a/ Numbers in parentheses represent claims that have been deferred for reasons set out in paragraph 18 of the report.

b/ Includes one withdrawn claim.